the circumstances I find that plaintiff's claim for loss of earnings at $180 a month is reasonable and I accordingly award a sum of $3,420.

With regard to general damages, the evidence of Dr. Abdul Majid bin Ismail (P.W.1), Orthopaedic Surgeon, General Hospital, Kuala Lumpur, is that the plaintiff suffered from a crushed right leg below the knee with the foot missing, a fracture of the shaft of the right femur and multiple fractures of the pelvis with rupture of the urethra. The plaintiff was in a bad condition when he was brought to the hospital. He was given resuscitative treatment and his leg was amputated through the knee. Because of the fracture of the femur, it had to be plated to enable an artificial leg to be fitted to the stump. Plaintiff was kept in hospital until 5th September, 1961. Dr. Abdul Majid further testified that the injury to the urethra was the sort of injury which causes impotence. There is also the evidence of Dr. Terence Roe (P.W.3) who treated the plaintiff for ruptured urethra. His evidence shows that the plaintiff's urethra had to be dilated now and again to enable plaintiff to pass urine and that this treatment will have to be continued for some time although the time may come when plaintiff may need to see a doctor perhaps once a year. He gave further evidence to say that he examined plaintiff five or six days before the trial and found that his general condition was good. On further examination he stimulated the plaintiff's penis and the scrotal skin to see if he would have an erection, but over a period of about 30 minutes there was no erection of the penis. He was, however, unable to say whether the plaintiff is impotent or not. On the question of impotence Brigadier R. S. Hunt (P.W.4), a consultant surgeon to the Far East Land Forces, gave evidence to say that as a result of his physical examination of the plaintiff, a study of the history of his case, the examination of X-rays and prostatic massage of the plaintiff he formed the opinion that the plaintiff is impotent. His opinion is based on the fact that a severe displacement of the bones at the root of the penis causes interference with the blood supply to the erectile tissue thus causing impotence. On the evidence of this witness which is to a certain extent corroborated by Dr. Abdul Majid, I have come to the conclusion that the plaintiff is impotent. There is of course the evidence of the plaintiff himself to say that he attempted to have intercourse with his wife in November, 1961, without success and that he has tried five or six times after that to have intercourse with his wife, but that he has been unable to do so because he does not have an erection, although he does have the desire to have sexual intercourse.

The injuries sustained by the plaintiff which caused his detention in the hospital for approximately six months, must have caused him great pain and suffering. His right leg has been amputated through the knee and he has become impotent as a result of these injuries. Although he will be able to walk once the artificial leg is fitted, he will not be able to do any work which calls for the lifting of heavy objects. The plaintiff is 35 years of age. His present general condition is stated to be good so that, barring accidents, he has a reasonable expectation of a normal working life of another twenty years. By reason of his artificial leg, however, his future earning capacity will be reduced considerably although he should find no difficulty in engaging in some form of light work. In all the circumstances of his case the plaintiff will also suffer considerable loss of amenities of life. Taking all these factors into consideration, I consider this eminently a case for substantial general damages which I assess at $37,000.

In arriving at my assessment of general damages, I have had in mind the decisions of the Court of Appeal in the cases of *Pahang Lin Siong Motor Co. Ltd. & Anor.* v. *Cheong Swee Khai & Anor.* [1] and *Jag Singh* v. *Toong Fong Omnibus Co. Ltd.* [2]. As regards damages for impotence, I considered the case of *Atkinson* v. *Ministry of Supply* [3] on *Quantum of Damages*, to which I was referred by Mr. Murphy, but subject to the observations of the Court of Appeal in the *Pahang Lin Siong Motor Co. Ltd.* case that "local social, economic and industrial conditions are poles apart from conditions in England and Scotland and any tendency to take a particular line in relation to assessment of damages in cases of this type from a consideration of English and Scottish cases is not calculated to produce very useful results."

There will be judgment for the plaintiff in the sum of $40,844.86 and judgment in favour of the first defendant. On the question of costs I order the second defendant to pay the costs of the plaintiff and of the first defendant, costs to be on the higher scale.

Judgment for the plaintiff. Second defendant to pay costs of the plaintiff and first defendant.

Solicitors: *Murphy & Dunbar; Allen & Gledhill; George & Khoo.*

THE NEW INDIA ASSURANCE CO. LTD. v. WOO CHING FONG

[C. A. (Rose C.J., Buttrose and Wee Chong Jin JJ.) October 25, 1962]

[Singapore — Civil Appeal No. 16 of 1962]

Insurance — Indemnity against loss of or damage to car — Driving under influence of drink — Whether breach of condition to take all reasonable steps to safeguard the car from loss or damage — Whether assured's criminal act precludes recovery of indemnity if not committed deliberately.

In this case the assured was a dance hostess who, while driving the insured car, collided with a tree, as a result of which the car was completely smashed and the assured killed. It was not disputed that the assured was at the time under the influence of drink to such an

extent as to be incapable of proper control of the car. Her administratrix claimed under section I of the motor insurance policy (made between the assured and the appellant insurance company on March 14, 1961) by which the insurance company agreed to indemnify the assured against loss of or damage to the insured car by accidental collision or overturning. The proviso to section IV of the policy provided that no compensation should be payable in respect of death or injury resulting from an accident happening whilst the assured was under the influence of intoxicating liquor or drugs. It was conceded by the insurance company that this proviso had no application to a claim under section I. But they relied on condition 3 of the policy which required the assured to take all reasonable steps to safeguard the car from loss or damage, and contended that she committed a breach of this condition by driving the car in question whilst under the influence of alcohol, and, therefore, they were not liable to pay the indemnity claimed. They also contended that it was contrary to public policy to enforce the insurance policy in respect of consequences of the assured's criminal act suffered by the assured as opposed to consequences suffered by third parties. In the Court below,

Held: (1) if the intention of the insurance company was to limit their liability under section I of the policy in the way in which their counsel would have it limited, they had used language in condition 3 which failed to make that intention clear; and

(2) the general rule of public policy that a person cannot recover indemnity under an insurance policy in respect of deliberate conduct on his part which is against the criminal law did not apply to this case because the assured's criminal act was not committed deliberately.

From this decision the insurance company appealed. The Court of Appeal in dismissing the appeal,

Held: (1) condition 3 is limited to matters occurring while the motor vehicle is in a state of immobility; and

(2) no question of public policy arose in the present case, because the criminal act committed by the assured was not a deliberate one.

Cases referred to:—

(1) *Haseldine* v. *Hosken* [1933] 1 K.B. 822.

(2) *Tinline* v. *White Cross Insurance Association Ltd.* [1921] 3 K.B. 327.

(3) *James* v. *British General Insurance Co.* [1927] 2 K.B. 311.

(4) *Marles* v. *Philip Trant & Sons* [1953] 1 All E.R. 651.

COURT OF APPEAL.

H. E. Cashin for the appellant.

Denis Murphy for the respondent.

In the Court below the following judgment was delivered:

Ambrose J.: This is an action on a motor insurance policy for indemnity in respect of the loss of a motor car which was destroyed as the result of an accident.

About 1.30 a.m. on the 7th April, 1961, while the assured, Hoo Kam Peen, was driving the insured car along Mountbatten Road towards the west, it collided with a tree on the north side of the road and went into a drain near the junction of Broadrick Road and Mountbatten Road. It was completely smashed, and the assured died about three hours later as a result of the injuries sustained by her. It is not disputed that the assured, who was a dance hostess, aged 24 years, consumed a minimum amount of three pints of beer or five fluid ounces of spirit shortly before the accident. And it is not disputed that the assured committed a statutory offence by driving the car whilst under the influence of drink to such an extent as to be incapable of having proper control of the car.

The claim is made under section I of a motor insurance policy made between the assured and the defendants on the 14th March, 1961. By that section of the policy the defendants agreed to indemnify the assured against loss of or damage to the insured car by accidental collision or overturning. It is to be noted that the policy contains a proviso to section IV which deals with accidents to the assured herself. The proviso is to the effect that no compensation shall be payable in respect of death or injury resulting from an accident happening whilst the assured is under the influence of intoxicating liquor or drugs. It is conceded by the defendants that this proviso has no application to a claim under section I.

The first submission of counsel for the defendants is that under condition 3 of the policy the assured was required to take all reasonable steps to safeguard the car from loss or damage; that she committed a breach of this condition by driving the car on the night in question whilst under the influence of alcohol; and, therefore, that the defendants are not liable to pay the indemnity claimed. In my opinion, if it was the intention of the defendants that no compensation should be payable in respect of loss of or damage to the car resulting from an accident happening whilst the assured was under the influence of intoxicating liquor or drugs, they would have inserted a proviso to that effect in section I. It seems clear to me that their failure to do so shows that they had no such intention at the time of the making of the policy. The intention expressed in section I of the policy is to insure against loss of or damage to the car by accidental collision or overturning, that is, any collision or overturning not intentionally caused. If the intention of the defendants was to limit their liability under section I of the policy in the way in which their counsel would have it limited, I take the view that they have used language in condition 3 which fails to make that intention clear. I am, therefore, unable to accept their counsel's submission.

The second submission of counsel for the defendants is that it is contrary to public policy to enforce the insurance policy in respect of consequences of the assured's criminal act suffered by the assured as opposed to consequences suffered by third parties. Counsel for the defendants cites *Haseldine* v. *Hosken* [1]. There it was held by the Court of Appeal in England that a contract indemnifying a solicitor against the consequences of any neglect, omission or error in his professional capacity could not be enforced in respect of damages recovered against him for champerty. This was an application of the general rule of public policy that a person cannot recover indemnity under an insurance policy in

respect of deliberate conduct on his part which is against the criminal law. In my view, this general rule cannot be applied to the present case because the assured's criminal act was not committed deliberately. It is not against public policy to enforce a contract to insure a person against the consequences of accidents due to negligence, even though the negligence is so gross as to amount to manslaughter: *Tinline* v. *White Cross Insurance Association Ltd.* [2]; *James* v. *British General Insurance Co.* [3]. Some doubts were felt about these two decisions by Scrutton and Greer L.JJ. in *Haseldine* v. *Hosken.* But as against these doubts there is the opinion of Denning L.J. that these two cases were rightly decided: see *Marles* v. *Philip Trant & Sons* [4], at p. 659. I think the law is correctly stated in the following passage from 22 *Halsbury's Laws of England,* 3rd edition, at page 355:

"A motor policy is not void as being contrary to public policy because it purports to cover the driver against the consequences of his own negligence."

It is to be observed that no distinction is drawn in this passage between consequences suffered by the assured and consequences suffered by third parties. There is no decided case where such a distinction has been drawn. And I myself see no reason for drawing it.

For the above reasons I give judgment for the plaintiff for the sum of $5,000, the agreed value of the car, plus $160, the agreed interest, and costs.

On appeal to the Court of Appeal,

Rose C.J.: At the conclusion of the hearing we dismissed the appeal and intimated that we would give our reasons later.

The claim in the present action is made under section I of a motor insurance policy made between the assured and the defendants on the 14th of March, 1961. By that section of the policy the defendants agreed to indemnify the assured against loss of or damage to the insured car by accidental collision or overturning.

It must be borne in mind that the present action relates only to damage to the car itself and that therefore the proviso to section IV of the policy which absolves the company from liability in the case of death or injury resulting from an accident happening whilst the assured is under the influence of intoxicating liquor or drugs has no application to the present claim.

The facts of the case are that on the 7th of April, 1961, the car, while being driven by the assured, one Hoo Kam Peen, was completely destroyed as a result of a collision with a tree.

It is not disputed that the assured, a dance hostess aged 24 years, was at the time under the influence of liquor to such an extent as to be incapable of proper control of the car. This would, no doubt, enable the defendants to defeat a claim by the plaintiff, the administratrix of the estate of the deceased, under section IV of the policy by reason of the proviso.

As regards this claim under section I of the policy learned counsel for the defendants relied upon conditions 3 and 9 of the policy which read as follows:—

"3. The insured shall take all reasonable steps to safeguard the motor vehicle from loss or damage and to maintain the motor vehicle in efficient condition and the company shall have at all times free and full access to examine the motor vehicle or any part thereof or any driver or employee of the insured. In the event of any accident or breakdown the motor vehicle shall not be left unattended without proper precautions being taken to prevent further loss or damage and if the motor vehicle be driven before the necessary repairs are effected any extension of the damage or any further damage to the motor vehicle shall be excluded from the scope of the indemnity granted by this policy.

x x x

9. The due observance and fulfilment of the terms of this policy insofar as they relate to anything to be done or not to be done by the insured and the truth of the statements and answers in the proposal shall be conditions precedent to any liability of the company to make any payment under this policy."

Learned counsel for the appellants submitted that a person who undertakes to drive a motor vehicle while under the influence of intoxicating liquor cannot reasonably be said to have taken "all reasonable steps to safeguard the motor vehicle from loss or damage" and that, therefore, the defendants are entitled to repudiate liability by virtue of condition 9.

It seems to me, however, that this contention is fallacious as a perusal of condition 3 as a whole would seem to indicate that it presupposes a state of immobility on the part of the vehicle and that the condition is therefore limited to matters occurring while the motor vehicle is in that state.

The use of the word "safeguard" would seem to support this view, as also does the fact that the words immediately following relate to the maintenance of the vehicle in efficient condition and the right of the insurance company to have free and full access for any of their employees for the purpose of examination of the vehicle.

As was pointed out by the learned trial Judge it would have been simple for the insurance company when drawing up their motor policy to have inserted a proviso to section I in similar terms to that contained in section IV, had it been their intention to exclude from the operation of section I an accident happening whilst the insured was under the influence of intoxicating liquor or drugs.

Moreover, no question of public policy arises. It is, no doubt, against public policy to protect an insured from the consequences of an illegal act which he has deliberately committed or undertaken to commit; but, in the light of the authorities in the United Kingdom, there would seem to be no reason to extend this principle to cases where an assured has committed a criminal but not a deliberate act.

In the present case, of course, there can be no suggestion of deliberation.

For these reasons the appeal was dismissed with costs.

Buttrose and Wee Chong Jin JJ. concurred.

Appeal dismissed.

Solicitors: *Rodyk & Davidson; Murphy & Dunbar.*

GOULD v. REGINA

[A. Cr. J. (Wee Chong Jin J.) November 7, 1962]

[Singapore — Magistrate's Appeal No. 156 of 1962]

Criminal Law and Procedure — Criminal Negligence — Penal Code, s.304A — Consideration of circumstances in assessing sentence — Road traffic accident — Failure to stop after — Consideration of circumstances in disqualification.

Road Traffic — Disqualification — Consideration of circumstances in.

The appellant was convicted on a charge under section 304A of the Penal Code and sentenced to a term of imprisonment for one year and was disqualified for a period of 10 years from holding or obtaining a licence to drive all classes of vehicles.

The appellant was driving a motor-car at about 11.25 p.m. along a straight stretch of road which was well lit and has a dual carriageway. Travelling ahead of him was a taxi. As the taxi approached a junction of cross roads it slowed down. The appellant overtook the taxi on its near side and in so doing knocked down a pedestrian who was crossing the road in front of the taxi from the concrete centre road divider towards the nearside of the road. The impact took place when the pedestrian was about 3 feet from the nearside of the road. The appellant did not stop and proceeded onwards at a speed slightly faster than that at which it was travelling when it overtook the taxi. The impact of the collision threw the pedestrian to the nearside of the road and he received fatal injuries. The appellant testified that he had the impression that the taxi was like going to turn right or was going to make a "U" turn but without giving any sign or signal to that effect. The appellant pulled out to his left to pass the taxi and just as he was about to pass the taxi felt a bump and saw that his front windscreen had fractured on the nearside. The appellant stated that he neither saw nor knew what caused the bump or the fracture of the windscreen but through that something had been thrown at his car from the side of the road. After the bump he continued to drive along because as he was in an area strange to him he was afraid to stop in case he got involved in an incident and got beaten up. He did not report the accident immediately because according to him he did not know the location of any police station at that time although he intended to report the accident immediately to the police. He made a report to the police the next morning after consulting a solicitor.

On appeal it was argued firstly, that on the facts as found by the District Judge, the appellant had not failed to do something which a reasonable man would have done and was therefore not guilty of negligence within the meaning of section 304A of the Penal Code and secondly, that the failure of the appellant to stop at the scene of the accident did not, as a matter of principle, increase the degree of negligence on the part of the appellant and that the District Judge was influenced by that fact in deciding upon imposing a term of imprisonment instead of a fine.

Held: (1) to overtake at night, at a speed of over 30 miles an hour, another vehicle, which was slowing down but had given no signal that it was going to make a turn, on an admittedly straight stretch of a dual carriageway, the road being dry and fairly well lit, and in the process of overtaking to knock down a pedestrian who had almost crossed the road to the extent of being only about 3 feet from the nearside edge of the road, without seeing him and without knowing what object, be it a person or a thing, one had come into contact with, is clear evidence of a failure to keep a proper look-out such as to amount to criminal negligence within the meaning of section 304A of the Penal Code;

(2) the fact that a motorist failed to stop after the accident should not be taken into consideration in assessing sentence on a charge under section 304A of the Penal Code. In the present case the District Judge was possibly influenced by the appellant's failure to stop immediately after the accident. Taking all the circumstances of the case into consideration, the appropriate sentence would be one of three months' imprisonment and disqualification from holding or obtaining a licence for a period of three years.

MAGISTRATE'S APPEAL.

N. A. Christopher for the appellant.

T. S. Sinnathuray (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Wee Chong Jin J.: The appellant was convicted on a charge under section 304A of the Penal Code and sentenced to a term of imprisonment for one year and was disqualified for a period of 10 years from holding or obtaining a licence to drive all classes of vehicles. He now appeals against both conviction and sentence.

At the trial before the learned Criminal District Judge the prosecution relied on an eyewitness, a taxi driver by the name of Goh Boon Siew. His evidence was that on the 18th of January, 1962 at about 11.25 p.m. he was driving his taxi SH. 2867 along Upper Serangoon Road from the direction of Yio Chu Kang Road towards the City. There were no passengers in his taxi at the time and he was travelling along a well lighted dual carriageway about 2 feet from the concrete centre road divider at an estimated speed of over 40 m.p.h. As he approached the junction of Upper Serangoon Road with an unnamed lane on the left (which, with a road leading to Kampong Potong Pasir on the right, forms a sort of cross-roads with Upper Serangoon Road) he saw the deceased. When he first saw the deceased who was wearing a white sarong, the latter was about 100 feet in front of him and was walking slowly straight across the road from the concrete centre road divider towards his nearside of the road. On seeing the deceased he flashed his head lights and lifted his foot off the accelerator and as a result of this the speed of his taxi was reduced to over 30 m.p.h. When the deceased got to about 3 feet from the nearside of the road, a Ford Consul car BD. 7604 driven by the appellant which had overtaken the taxi on its nearside knocked into the deceased. At the moment of impact the taxi was about 20 feet behind the deceased and had been overtaken a short distance by the Ford Consul which at the time of overtaking, impact and subsequently, had